



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arthur Young & Company

File: B-226626

Date: June 12, 1987

DIGEST

Contracting agency reasonably determined that a potential conflict of interest existed and properly excluded the protester from competing for a contract to appraise utility property for negotiation to sell agency's interest in the utility where the protester has performed auditing services involving the same property for the buyer.

DECISION

Arthur Young & Company protests the determination by the Bureau of Indian Affairs that it is ineligible to compete under request for proposals (RFP) No. 7-654 because of the potential for a conflict of interest. We deny the protest.

The RFP is for an inventory and appraisal of the properties held by the utility system serving Barrow, Alaska. Portions of the utility system's real and personal property are separately owned by the Bureau, the Barrow Utilities and Electric Cooperative, Inc., which operates the system, and the North Slope Borough which is a local government entity. The purpose of the RFP is to identify and assess a fair market value of the property as a basis for negotiating the sale of the Bureau's property to the North Slope Borough.

Because Arthur Young provides auditing services to both the Cooperative and the North Slope Borough, and the prospective contract includes property that had previously been the subject of Arthur Young's audit work done on behalf of both entities, the contracting officer determined that an award to Arthur Young would raise at least the appearance of a conflict of interest. The contracting officer learned of Arthur Young's relationship with the other owners of the utility property after the solicitation was issued, and advised Arthur Young before it submitted a proposal that it was ineligible for award.

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The protester argues that the work covered by the RFP requires an approach which does not involve much discretion and therefore the contractor will lack the opportunity to influence the result. Since the method for valuing the property is to be based on acquisition cost minus depreciation, the factors for determining current fair market value are, according to the protester, all mostly a matter of record. In this regard, the protester says that obtaining the acquisition cost can be determined primarily from the utility's records, the depreciation rates by reviewing the rates approved by the state utilities commission, and the salvage value from recorded sales of similar property.

It is important that conflicts of interest be avoided. Toward this end, contracting agencies may impose a variety of restrictions and are not necessarily limited to those expressly provided by statute or regulation, even where the restrictions effectly disqualify a particular firm from receiving an award. Defense Forecasts, Inc., 65 Comp. Gen. 87 (1985), 85-2 CPD ¶ 629; Deloitte Haskins & Sells, B-222747, July 24, 1986, 86-2 CPD ¶ 107. The responsibility for determining whether a conflict of interest, or the appearance thereof, will exist if a firm is awarded a particular contract, and to what extent the firm should be excluded from competition, rests with the contracting agency. We will not overturn the agency's determination in this regard, except where it is shown to be unreasonable. Defense Forecasts, Inc., 65 Comp. Gen. 87, supra.

The Bureau has presented a reasonable basis for determining Arthur Young ineligible to compete. As the Bureau points out, if Arthur Young obtained the contract, it would be in the position of determining the ownership and value of utility property which the firm presumably already has dealt within its audit work on behalf of the North Slope Borough and the Cooperative. Arthur Young does not deny that this is so, but argues that the type of work involved here is not susceptible to manipulation. At the same time, the protester admits that the work is "highly technical and the information will be difficult to retrieve and analyze." Therefore, regardless of the amount of discretion inherent in the methodology, there exists ample reason to require the utmost objectivity in obtaining the necessary information to avoid even the appearance of a conflict of

interest. See SysteMetrics, Inc., B-220444, Feb. 14, 1986,
86-1 CPD ¶ 163.

The protest therefore is denied.

for Seymour Egan
Harry R. Van Cleve
General Counsel